

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

PATERNO S. GARCIA,  
                    appellant,

v.

OFFICE OF PERSONNEL  
MANAGEMENT,  
                    agency.

DOCKET NUMBER  
SE08318610084

Date: JUL 01 1986

BEFORE

Maria L. Johnson, Acting Chairman  
Dennis M. Devaney, Member

OPINION AND ORDER

The appellant petitions the Board for review of the initial decision of the Seattle Regional Office dismissing his petition for appeal. In the initial decision, the presiding official found that the Board had no jurisdiction over the appeal as the Office of Personnel Management (OPM) had not issued a final determination on the appellant's application for retirement benefits. For the reasons set forth below, we hereby GRANT the petition for review, VACATE the initial decision, and REMAND the case to the Seattle Regional Office. See 5 U.S.C. § 7701(c)(a)(A).

Analysis

The appellant has asserted that OPM has failed to issue a decision on his application for a Civil Service retirement annuity. He has further asserted that he forwarded several letters regarding this matter to various offices of OPM, but failed to receive a reply to any of them.

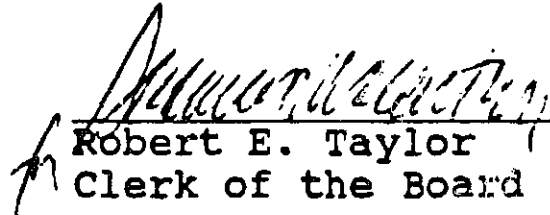
An OPM reconsideration decision is usually a prerequisite to Board jurisdiction. See 5 C.F.R. § 831.110; *Richards v. Office of Personnel Management*, 29 M.S.P.R. 310,

311 (1985); *Kalagayan v. Office of Personnel Management*, 9 M.S.P.R. 147, 147-48 (1981); *Obejera v. Office of Personnel Management*, 7 MSPB 739, 739-40 (1981). However, if OPM in fact has improperly failed to respond to the appellant's repeated requests for a decision on his retirement application, dismissal of this appeal could effectively prevent the appellant from pursuing this matter. Under those circumstances, the Board therefore would have jurisdiction over the appellant's appeal. See *Richards*, 29 M.S.P.R. at 312 (Board assumed jurisdiction of part 831 appeal when OPM failed to advise appellant of his right to reconsideration decision); *Phillips v. Veterans Administration*, 21 M.S.P.R. 409, 412 (1984) (when an agency improperly denies an employee an opportunity for reconsideration under subpart 531D, the denial is sufficient to allow the Board to assume jurisdiction).

OPM has made no submission in this case, either while the appeal was pending with the regional office or after the appellant filed his petition for review. We therefore are unable to determine, on the basis of the present record, whether OPM has issued a reconsideration decision, or whether it has otherwise responded to the appellant's correspondence. Accordingly, we hereby VACATE the initial decision and REMAND the case to the Seattle Regional Office. The regional office shall obtain a copy of OPM's file in this case (or copies of other relevant documents, if no file has been established by that agency). In addition, it shall determine whether OPM has issued a final determination in

this case and, if it has not, whether its failure to do so forms a basis on which the Board should assume jurisdiction over the appellant's appeal.\*

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

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\* These determinations may be based, when appropriate, on one party's failure to deny or otherwise respond to the other party's allegations.